

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NORMAN DUKES	:	CIVIL ACTION
	:	
v.	:	NO. 03-919
	:	
THE KINTOCK GROUP	:	

ORDER AND OPINION

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

DATE: September 15, 2005

This a motion for summary judgment for the Plaintiff on the issues of damages only.

Norman Dukes, the Plaintiff, maintains that The Kintock Group, the Defendant, has conceded that the damages in this matter are in excess of \$75,000.01. It asks, therefore, that the Kintock Group stipulate that Dukes' damages are \$75,000.01. For the reasons set forth below, this motion is denied.

I. Factual Background

On or about January 30, 2001, while residing at The Kintock Group's place of business, a residential facility providing a release and transition program to prison inmates returning to the general population, Dukes was stabbed in the arm by a person also residing at The Kintock Group's facility. On January 24, 2003, Dukes filed a complaint in the Court of Common Pleas of Philadelphia County alleging that The Kintock Group was negligent in providing adequate security to the residents, and therefore is liable to Dukes for damages suffered as a result in the amount of \$50,000. See Plaintiff Norman Dukes' Complaint.

The Kintock Group then sought removal of the action to federal court on February 18, 2003. The Kintock Group stated that “because plaintiff’s Complaint alleges a serious and permanent injury, as well as a loss of earnings and earning capacity, the amount in controversy exceeds \$75,000.” See Defendant The Kintock Group’s Notice of Removal at n. 8. In response, Dukes stated that “based on Defendant’s assertion that it [is] Defendant’s belief that Plaintiff’s damages are greater than \$75,000.00, Plaintiff will admit to this allegation and it is therefore stipulated by the parties that Plaintiff’s damages have a value greater than \$75,000.00.” See Plaintiff, Norman Dukes’ Response to Defendant, The Kintock Group’s Notice of Removal at n.8. Based upon this admission, the action was removed to federal court.

Over one year later, Dukes moved to remand the action to state court, stating that after further evaluation of the case, he “no longer believe[d] or aver[red] that the amount in controversy in this matter exceeds \$75,000.” See Plaintiff Norman Dukes’ Motion For Remand to State Court at n.3. This motion was denied by Judge Kauffman on November 17, 2004 because “any attempt by a party to revise damages below \$75,000 after removal has already been effected is of ‘no legal significance.’” See Order denying Plaintiff’s Motion For Remand (quoting Angus v. Shiley, Inc., 989 F.2d 142, 145 (3d Cir. 1993)).

Now, Dukes moves for summary judgment on damages. Dukes asserts that due to the parties’ agreement, there is no material issue of fact as to the amount of damages and that if The Kintock Group is found liable, Dukes should be awarded \$75,000.01. See Plaintiff Norman Dukes’ Motion for Summary Judgment.

II. Legal Principles

Summary judgment is appropriate where, viewing the record in light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Michaels v. New Jersey, 222 F.3d 118, 121 (3d Cir. 2000).

Summary judgment should be granted where the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

III. Discussion

When subject matter jurisdiction is based on diversity, as it is in this case, (1) the action must be between citizens of different states, and (2) the amount in controversy must exceed \$75,000. The Congressional purpose behind the "amount in controversy" requirement is to restrict federal jurisdiction in diversity cases. Saint Paul v. Mercury Indemnity Co. v. Red Cab Company, 303 U.S. 238, 289 (1938).

Where diversity exists, an action brought in state court may be removed by the defendant to federal court, but only where it is demonstrated that the jurisdictional amount is at issue. 28 U.S.C. § 1441. In the Third Circuit, a defendant seeking removal must show by this by a legal certainty. Samuel-Bassett v. Kia Motors America, Inc., 357 F.3d 392, 396 (3d Cir. 2004).

Dukes has misconstrued this requirement. The Kintock Group was required to show by a legal certainty that more than \$75,000 was *in controversy*: i.e., that the case, as alleged by Dukes would result in a *claim* for more than that amount. It was not required to show – or to agree – that Dukes was actually entitled to all of that amount, even if liability were proved. Dukes has not shown that The Kintock Group has ever, in fact, agreed to an amount of damages.

It appears that Dukes was misled by the counterintuitive fact that in a contested removal, the plaintiff claims to have a small case, and the defendant argues that the plaintiff's case is a large one. The Court of Appeals commented on this in Samuel-Bassett:

We recognize that requiring a defendant to show to a legal certainty that the amount in controversy exceeds the statutory minimum may lead to somewhat bizarre situations. As the Court observed in Shaw v. Dow Brands, Inc., 994 F.2d 364, 366 (7th Cir. 1993), oral argument presented a comic scene: plaintiff's personal injury lawyer protests up and down that his client's injuries are as minor and insignificant as can be, while attorneys for the manufacturer paint a sob story about how plaintiff's life has been wrecked. It would not be a surprise that when the time came for assessment of damages the parties would once again switch their views by some 180 degrees.

357 F.3d 392, 398.

Counterintuitive though it may be, this 180 degree switch is permitted. It is the by-product of legitimate federal policies limiting access to federal court, and preventing “forum shopping.” Accordingly, I now enter the following:

ORDER

AND NOW on this 15th day of September, 2005, upon consideration of Plaintiff's Motion for Summary Judgment, filed in this action as Document No. 23 and Defendant's response thereto, as well as Plaintiff's reply, it is hereby **ORDERED** and **DECREED** that the Motion for Summary Judgment is denied by the Court.

BY THE COURT:

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE